

EXHIBIT 11

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2 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

3 -----x

4 DAVID FLOYD, LALIT CLARKSON, DEON DENNIS
and DAVID OURLICHT, individually and on
5 behalf of a class of all other similarly
situated,

6 Plaintiffs, Index No.

7 -against- 08 CIV 01034

8 THE CITY OF NEW YORK, NEW YORK CITY POLICE
COMMISSIONER RAYMOND KELLY, in his
9 individual and official capacity, et al,

10 Defendants.

11 -----x

12 November 23, 2009

13 10:42 a.m.

14

15 VOLUME II

16 CONTINUED DEPOSITION of JOSEPH

17 ESPOSITO, taken by the Plaintiffs, at One Police
18 Plaza, New York, New York before Karen Perlman, a
19 Shorthand Reporter and Notary Public within and
20 for the State of New York.

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2 APPEARANCES:
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6 New York, New York 10016
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8 RACHEL KLEINMAN, ESQ.
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10
11 NEW YORK CITY LAW DEPARTMENT
12 OFFICE OF CORPORATION COUNSEL
13 Attorneys for the Defendants
14 100 Church Street
15 New York, New York 10007
16 BY: JENNIFER ROSSAN, ESQ.
17 LINDA DONAHUE, ESQ.
18
19 ALSO PRESENT:
20 KERRY SWEET, ESQ., NYPD Legal Bureau
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1 J. Esposito
2 Q. But in terms of being the person who
3 is responsible in the department for ensuring
4 that this order is complied with, has he
5 delegated that duty to you, or has he maintained
6 that responsibility in his office?

7 A. Performance in this area will also
8 be included in the CompStat review, at the very
9 least that's me.

10 Q. In terms of articulating the policy
11 though, that there is a policy against racial
12 profiling, there is a policy against stop and
13 frisk, is that the province of the commissioner
14 or the chief of the department?

15 A. It's everyone's job in this agency.

16 Q. Who is primarily responsible for it?

17 MS. ROSSAN: Objection to form.

18 A. Responsible for what?

19 Q. Who has the last word on it?

20 A. The last word on what, the policy?

21 Q. On the policy regarding --

22 A. He has the last word on the policy.

23 Q. -- stop, question and frisk?

24 That is with regard to stop,

25 question and frisk, right?

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1 J. Esposito

2 A. He has the last word on every
3 policy, including stop, question and frisk.

4 Q. And including the department's
5 policy regarding racial profiling, right?

6 A. Yes.

7 MR. MOORE: So when is he going to
8 come testify?

9 MS. ROSSAN: That is why I'm shaking
10 my head. I object.

11 MR. MOORE: Add that to the list of
12 depositions.

13 MS. ROSSAN: That you can't have.

14 MS. DONOHUE: You're not getting it.

15 MR. MOORE: That I can't have and
16 that I'm not getting? We'll both see when
17 it happens. Unless there has been an order
18 today that you're aware of that I am not.

19 MS. ROSSAN: We're sitting here with
20 you.

21 MR. MOORE: That doesn't mean you're
22 not on your BlackBerry.

23 THE WITNESS: We got a half hour
24 left and then I got to take a break. We
25 can come back later this afternoon, but I

30 (Pages 362 to 365)